In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 27

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, ET AL., PETITIONERS

v.

EDDIE WITTSTEIN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

At its annual convention in 1963, petitioner American Federation of Musicians increased its dues by a resolution adopted by a majority of the votes cast by the delegates voting, with each delegate casting a number of votes equal to the membership of the local union he represented. The court of appeals held that the dues increase violated Section 101(a)(3) of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 411(a)(3)), which pro-

vides that the dues of an international union "shall not be increased * * * except [*inter alia*] * * * by majority vote of the delegates voting at a * * * convention." The court construed the statute as requiring that each delegate be allowed but one vote regardless of the number of members he represents.

While the United States has no direct responsibility for enforcement of Section 101(a)(3), the Secretary of Labor is responsible for the administration of the provisions of Title IV of the Act governing the election of union officers and thus has an immediate concern with the general policy of the Act to foster union democracy. Because in our view the decision below unjustifiably frustrates that policy, we join with petitioner in urging that the judgment be reversed.

The method of convention voting held by the court of appeals to be required by the statute—a head count of the delegates—would permit dues to be raised by delegates representing but a small minority of the membership. Membership-weighted voting, in contrast, permits such action only with the concurrence of delegates representing a majority of the members and is thus a markedly more democratic method of decision-making. Not only would it be surprising to find in a statute devoted to the cause of union democracy an insistence on the less democratic method of voting, but the legislative history—recounted in detail in petitioners' brief—is persuasive that none was intended.

The court of appeals as much as acknowledged that its interpretation did not accord with the apparent purposes of the statute but proclaimed itself forced

to that result by its inability "to perceive any other meaning attributable" to the words used in the statute (R. 185). In our view, however, the words are readily susceptible of an opposing construction. The statute permits dues to be increased "by majority vote of the delegates voting." A vote in which each delegate is allowed to cast as many votes as there are members in his local is still a "vote of the delegates," since delegates and only delegates do the voting. The requirement of only a "majority" vote of the delegates means that a simple majority of the votes cast is sufficient for the action to be taken—*i.e.*, the statute does *not* require dues increases to be passed by a two-thirds or some other super-majority vote. The limitation to a majority vote of the delegates "voting" means that the "Yea" votes need be a majority only of the votes cast, not of all the votes eligible to be cast, including those of absent or abstaining delegates. In short, the statute says only by whom the votes must be cast (delegates to a convention) and the proportion of the votes needed for passage (a majority of the votes cast by the delegates voting); it says nothing of the number of votes each delegate may be allowed to cast.

It may be said that the above interpretation, since it leaves labor organizations free to determine the weight to be given delegates' votes, would not prevent a union from adopting some wholly arbitrary distribution of voting strength. Even assuming that to be true,[1] the danger seems more fanciful than real.

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[1] We do not mean to concede, however, that there are no outer limits on the allocation of votes. Query, for example,

The provisions of union constitutions governing delegate voting strength are open covenants openly arrived at, and the jealously with which each local guards its representation makes it extremely unlikely that votes would ever be weighted on any basis other than membership. Malapportionment is much more likely to be accomplished through limiting the number of delegates and confining each delegate to one vote regardless of the size of his constituency. Whatever the reason, the fact is that there has been no history of abuse in the weighting of delegate votes and thus no reason for Congress to have limited union autonomy in that respect or to anticipate that the power will be abused. Congress's concern was that the officers alone should not have power to raise dues; it sought to ensure that there be a vote.

Whether or not the interpretation we urge is the most natural reading of the words of the statute, it is at the very least a permissible one. It is in turn the only interpretation consistent with the history and purpose of the statute, as is fully demonstrated in the petitioners' brief. It should therefore be adopted, and the judgment below should be reversed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

AUGUST 1964.

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whether one casting votes allocated to him on a basis other than the unit or members he represents would be voting as a "delegate" (*i.e.*, as a representative of his local or its members).

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